Hamline Law Review

Volume 37 | Issue 2 Article 2

2014

The Trouble with Protecting the Vulnerable: Proposals to Prevent Developmentally Disabled Individuals from Giving Involuntary Waivers and False Confessions

Patricia Devoy
patricia.devoy@faegrebd.com

THE TROUBLE WITH PROTECTING THE VULNERABLE: PROPOSALS TO PREVENT DEVELOPMENTALLY DISABLED INDIVIDUALS FROM GIVING INVOLUNTARY WAIVERS AND FALSE CONFESSIONS

Patricia Devoy[*]

I. INTRODUCTION 254

II. BACKGROUND 256
A. THE PLATFORM FOR VULNERABILITY: WHAT IT MEANS TO BE DEVELOPMENTALLY DISABLED 256
B. HOW VULNERABILITY DURING POLICE INTERROGATIONS RESULTS IN INVOLUNTARY WAIVERS AND FALSE CONFESSIONS 261
1. STANDARD POLICE INTERROGATION TACTICS 261
2. RECOMMENDED INTERROGATION TACTICS FOR QUESTIONING THE UNINTELLIGENT, UNEDUCATED, AND HANDICAPPED 262
3. OBTAINING VALID WAIVERS OF MIRANDA *RIGHTS* 262
4. REALITIES OF FALSE CONFESSIONS AND THE WAIVER OF MIRANDA *RIGHTS* 264
A. EARL WASHINGTON 264
B. CHARLES SINGLETARY 267
5. DAN YOUNG: REALITIES OF DEVELOPMENTALLY DISABLED SUSPECTS WHO ARE GUILTY, ABLE TO WAIVE THEIR RIGHTS, AND GIVE VALID CONFESSIONS 269
C. EXISTING PROPOSALS AND PRACTICES TO LIMIT INVOLUNTARY WAIVERS AND FALSE CONFESSIONS 270
1. IMPROVING POLICE EDUCATION 270
2. TAKING SPECIAL STEPS TO ENSURE THE VOLUNTARINESS OF A WAIVER 271
3. EMPLOYING SPECIAL INTERROGATION TACTICS TO AVOID ELICITING A FALSE CONFESSION 272
4. VIDEOTAPING INTERROGATIONS 272

III. ANALYSIS 273
A. PROPOSALS TO LIMIT INVOLUNTARY WAIVERS AND FALSE CONFESSIONS 273
1. IMPROVING POLICE EDUCATION WITH "PRE-SERVICE" AND

[*] J.D., *magna cum laude*, 2013, Hamline University School of Law; Associate, Faegre Baker Daniels LLP. I want to thank Professor Derik Fettig for his role in editing this article and for encouraging me to seek publication. I also want to especially thank my family and LDB for their constant support.

"IN-SERVICE" TRAINING 273
2. *IMPLEMENTING THE BASIC INTELLIGENCE TEST TO ENSURE THE VOLUNTARINESS OF A WAIVER* 276
3. *SPECIAL INTERROGATION TACTICS MUST BE USED TO ELICIT CONFESSIONS, AND ALL CONFESSIONS MUST BE CORROBORATED WITH INDEPENDENT EVIDENCE TO ENSURE THEIR CREDIBILITY* 283
A. REQUIRING INFORMATION FROM THE SUSPECT 283
B. EMPLOYING SPECIAL INTERROGATION TACTICS 284
C. REQUIRING CORROBORATION THROUGH INDEPENDENT EVIDENCE 287
B. ENSURING THE EFFECTIVENESS OF THE PROPOSALS: DEVELOPMENTALLY DISABLED INDIVIDUALS SHOULD NOT BE CATEGORICALLY PROHIBITED FROM GIVING A VOLUNTARY WAIVER OR CONFESSION 289

IV. CONCLUSION 290

I. INTRODUCTION

Imagine a scenario where a suspect has willingly waived his *Miranda* rights and agreed to speak to a police officer without an attorney present. The officer begins the interrogation with the simple statement, "I'd like to talk to you about a woman who was stabbed last year." The suspect takes a moment to process the statement, suddenly begins to cry, and gives a full confession to the crime. The officer proceeds to use standard interrogation tactics and asks a series of questions, which are quickly answered with details from the suspect describing his commission of the crime. Throughout the entire interrogation the suspect is unusually eager to provide answers, and is willing to incriminate himself without hesitation. Most importantly, all of the details focus on how he stabbed the victim.[1]

This scenario would seem like a successful interrogation from the perspective of an officer who received the standard "pre-service" interrogation training offered by state police academies today.[2] On the other hand, to an officer who has been properly trained in how to identify developmentally disabled individuals, the above scenario would raise

[1] *See infra* Part II.B.4.a (illustrating the case history of Earl Washington's false confession to the crimes of rape and murder, for which he was ultimately exonerated due to DNA evidence).

[2] *See infra* note 26 (explaining the interrogation training received at the police academies in the state of Minnesota).

numerous red flags as to the credibility of the confession and the voluntariness of the waiver.[3]

Developmentally disabled individuals are one of the most vulnerable groups of individuals subject to the criminal justice system.[4] The two primary factors that account for this vulnerability are: (1) not all of these individuals manifest physical characteristics commonly associated with developmental disability that would otherwise make them easy to identify; and (2) these individuals have a predisposition to pleasing authority figures.[5]

The resulting problem is that officers who do not identify these individuals proceed with a standard administration of *Miranda* warnings, which are frequently waived involuntarily due to a lack of comprehension.[6] Moreover, officers use standard interrogation tactics, which have the effect of eliciting false confessions when used on developmentally disabled individuals.[7] Individuals of ordinary intelligence are far more capable of withstanding the psychological pressures associated with standard interrogation tactics than are developmentally disabled individuals, leaving this population vulnerable during interrogations. The criminal justice system needs to have safeguards in place so that: (1) developmentally disabled individuals will be identified by police officers prior to an interrogation; (2) steps will be taken to ensure their comprehension of the *Miranda* warnings and their right to waive them; and (3) specific interrogation tactics will be used to avoid eliciting false confessions. Such safeguards will ultimately limit the number of innocent individuals who, as a result of their disability, give false confessions to crimes they have not committed, like the suspect from the above scenario, Earl Washington.

Part II of this article explains what it means to be developmentally disabled, and how developmental disability differs from mental illness, especially regarding treatment from the criminal justice system.[8] Part II also provides examples of standard interrogation tactics, recommended interrogation tactics, and existing practices and proposals to combat the problem of involuntary waivers and false confessions. Additionally, Part II

---

[3] *See infra* Part III.A.1 (explaining how improvements in police education will help limit the number of invalid waivers of *Miranda* warnings and false confessions by developmentally disabled suspects).

[4] *See infra* Part II.B (explaining cases where developmentally disabled individuals falsely confessed to crimes, were convicted, and ultimately pardoned after further investigation proved their innocence).

[5] *See infra* Part II.A (explaining the common challenges associated with identifying developmentally disabled individuals); *infra* notes 18–19 and accompanying text (explaining challenges associated with developmentally disabled individuals' predisposition to pleasing authority figures).

[6] *See infra* Part II.A (explaining factors that contribute to developmentally disabled individuals' inability to adequately comprehend *Miranda* rights).

[7] *See infra* Part II.B (explaining the characteristics of developmentally disabled individuals that render them unusually susceptible to influence by authority figures, and their inability to withstand psychological pressures of interrogations).

[8] *See infra* Part II.

illustrates through various cases how developmental disability relates to false confessions and involuntary waivers of *Miranda* rights.

Part III offers new proposals for how to limit the number of involuntary waivers and false confessions given by developmentally disabled individuals in the future while highlighting the flaws of existing practices.[9] Such proposals include: improving police training in how to recognize and interrogate developmentally disabled individuals; implementing the Basic Intelligence Test to be administered to individuals who will be interrogated for felony-level crimes; and requiring specific interrogation tactics and independent corroboration for any confessions given by developmentally disabled individuals. To ensure the safeguards are not so protective that it becomes impossible to prosecute those who are in fact guilty of committing crimes, developmentally disabled individuals should not be categorically prohibited from giving voluntary waivers or confessions. Part IV concludes with a summary of the problem and the safeguards that must be put into place to protect these individuals who, by the very nature of their disability, are incapable of protecting themselves.[10]

II. BACKGROUND

A. The Platform for Vulnerability: What It Means to Be Developmentally Disabled

It has been well established by courts and scholars that developmentally disabled individuals are considered one of the most vulnerable groups of people subject to the criminal justice system, especially in the setting of police interrogations.[11] Many factors account for their vulnerability, beginning with the nature of their development in the early

---

[9] *See infra* Part III.

[10] *See infra* Part IV.

[11] Atkins v. Virginia, 536 U.S. 304, 318 (2002); State v. Ives, 648 A.2d 129, 142 (Vt. 1994); State v. Lockwood, 632 A.2d 655, 668–69 (Vt. 1993); People v. Braggs, 810 N.E.2d 472, 484 (Ill. 2003); Chinn v. Warden, No. 3:02–cv–512, 2011 WL 5338973, at *20 (S.D. Ohio Oct. 14, 2011); Steven A. Drizin & Richard Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 919 (2004) (stating developmentally disabled individuals are vulnerable to pressures of interrogation, and are "therefore less likely to possess or be able to muster the psychological resources or perspective necessary to withstand accusatorial police questioning"); Brandon L. Garrett, *False Confessions*, 37 LITIGATION 54, 56 (2011); Zhiyuan Guo, *Approaching Visible Justice: Procedural Safeguards for Mental Examinations in China's Capital Cases*, 33 HASTINGS INT'L & COMP. L. REV. 21, 45 (2010) (comparing Chinese and American laws and identifying developmentally disabled individuals as among the most vulnerable and "in the greatest need of effective defense" in the United States); Meghan Morris, *The Decision Zone: The New Stage of Interrogation Created by* Berghuis v. Thompkins, 39 AM. J. CRIM. L. 271, 283–84 (2012) (citing State v. Lawrence, 920 A.2d 236, 264 (Conn. 2007) (Palmer, J., concurring)).

stages of life.[12] A person is developmentally disabled (mentally retarded)[13] when he or she has:

> significantly subaverage general intellectual functioning (Criterion A) that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety (Criterion B). The onset must occur before age 18 years (Criterion C).[14]

General intellectual functioning under Criterion A refers to the intelligence quotient (IQ or IQ equivalent) score a person receives from administration of any standardized intelligence test.[15] "Significantly subaverage" is generally measured at an IQ of 70 or below.[16] As developmentally disabled individuals progress through adolescence and into adulthood, they often exhibit characteristics that make them particularly vulnerable during police interrogations, allowing police to frequently obtain confessions that are later discovered to be false.[17]

The characteristic that makes these individuals the most vulnerable during interrogations is their predisposition to being eager to please and defer to authority figures.[18] Because they are so eager to please authority figures,

---

[12] *See* AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 41 (4th ed. 2000).

[13] "Developmentally disabled" and "mentally retarded" may generally be used interchangeably, but this article will primarily use "developmentally disabled."

[14] AM. PSYCHIATRIC ASS'N, *supra* note 12, at 41.

[15] *Id.*

[16] *Id.* "[T]here is a measurement error of approximately 5 points in assessing IQ . . . . Thus, it is possible to diagnose Mental Retardation in individuals with IQs between 70 and 75 who exhibit significant deficits in adaptive behavior." *Id.* at 41–42. Additionally, the opposite is true, and a person with an IQ below 70 would not be diagnosed as mentally retarded if they had sufficient adaptive functioning. *Id.* at 42. The score for a person with a normal range of intelligence is between 90–110. *See* Rodrigo de la Jara, *IQ Basics*, IQ COMPARISON SITE, http://www.iqcomparisonsite.com/IQBasics.aspx (last visited Apr. 5, 2014). Adaptive functioning under Criterion B identifies how well a person copes with the demands of everyday life and how independent they are compared to what would be expected of a person in their age group, sociocultural background, and community who is not deficient in adaptive functioning. AM. PSYCHIATRIC ASS'N, *supra* note 12, at 42.

[17] *See* Garrett, *supra* note 11, at 56 (explaining that it is known that innocent people falsely confess to crimes they have not committed, and that many of these people are developmentally disabled or others similarly situated who are vulnerable to police pressure); *see also* Drizin & Leo, *supra* note 11, at 971 ("[T]he unique vulnerability of the mentally retarded to psychological interrogation techniques and the risk that such techniques when applied to the mentally retarded may produce false confessions is well-documented in the false confession literature.").

[18] *See* Drizin & Leo, *supra* note 11, at 920; Morris, *supra* note 11, at 297–98; Singletary v. Fischer, 365 F. Supp. 2d 328, 334 (E.D.N.Y. 2005) [hereinafter *Singletary II*]

they frequently agree with statements made by police officers, regardless of truth, and willingly waive their *Miranda* rights in an effort to appear cooperative with officers, despite not understanding the warnings.[19] Additionally, they become confused easily, are concrete as opposed to abstract thinkers, and are unable to appreciate the severity of a situation or the long-term effects of their statements and actions.[20] Based on these characteristics, it becomes easier to understand why developmentally disabled individuals account for a high number of false confession cases.[21] The United States Supreme Court has even cited the high risk of false confessions as a primary reason for why these individuals are exempt from the death penalty under the Eighth Amendment.[22]

Another reason these individuals are so vulnerable is the fact that their condition is not always readily apparent to the officers conducting the interrogations.[23] Officers may recognize that a person is responding slowly,

---

(quoting expert testimony that found "individuals with IQ scores in the range [of developmental disability] are generally more suggestible, more readily manipulable and more eager to please and comply with authority than those of average intelligence").

[19] *See generally* Morgan Cloud et al., *Words Without Meaning: The Constitution, Confessions, and Mentally Retarded Suspects*, 69 U. CHI. L. REV. 495, 511–14 (2002) (discussing characteristics that render developmentally disabled people especially susceptible to police pressures); Emily Bretz, Note, *Don't Answer the Door:* Montejo v. Louisiana *Relaxes Police Restrictions for Questioning Non-Custodial Defendants*, 109 MICH. L. REV. 221, 245 (2010) (discussing developmentally disabled individuals' inability to understand the need for counsel and propensity to waive their right to counsel).

[20] Drizin & Leo, *supra* note 11, at 920; *see, e.g.*, *Lockwood*, 632 A.2d at 672 (explaining that if an officer asks a developmentally disabled suspect whether he knows where the gun is, the defendant would say "yes" because that is a concrete answer to the question; however, the suspect cannot abstractly comprehend this answer to mean either, "[d]o you mean I should take you to it, or do you mean I should bring it to you[?]").

[21] Drizin & Leo*, supra* note 11, at 920–21. Because developmentally disabled individuals are susceptible to non-physical forms of coercion more than a person of normal intelligence, they are less likely to be able to handle the psychological stress and fear that occur during a police interrogation. *Singletary II*, 365 F. Supp. 2d at 334. Additionally, it is not uncommon for a false confession to occur because, when developmentally disabled individuals lie, they do not exhibit the same fears of consequences that people of ordinary intelligence do, and do not feel the same levels of guilt, remorse, or shame when interrogated that others do. *See* FRED E. INBAU ET AL., CRIMINAL INTERROGATION AND CONFESSIONS 403–04 (4th ed. 2004) (explaining the difficulties interrogators face when questioning an unintelligent or uneducated suspect).

[22] *Atkins*, 536 U.S. at 320–21. Additionally, the court cited the reduced capacity of mentally retarded offenders as a justification for the exemption from the death penalty. *Id.*

[23] *Id.* at 317 (explaining that in the dispute over executing developmentally disabled individuals, the difficulty is in determining which offenders are in fact developmentally disabled); *see, e.g.*, Faris v. State, 901 N.E.2d 1123, 1124 (Ind. Ct. App. 2009). A 28-year-old father with an IQ between 52–62 was interrogated by police officers regarding whether he had sexually molested his daughter, to which he admitted to touching his daughter's "pee pee." *Id.* Both interrogating officers testified they did not realize he was developmentally disabled because nothing seemed out of the ordinary about him. *Id.* at 1127. The court acknowledged that the defendant's use of the phrase "pee pee" to describe his daughter's vagina was an odd term for a 28-year-old man to use and a potential red flag, but

but will not suspect a disability if the response is still rational.[24] Part of the problem is that there are four degrees of developmental disability that are hard for the untrained interrogators to differentiate: mild, moderate, severe, and profound.[25] About 85% of developmentally disabled individuals fall into the mild category, which is difficult for police officers to identify unless that person portrays obvious deficiencies in his or her mental development.[26] Even more problematic is that the Supreme Court has refused to offer guidance by way of establishing a test to be used to determine when a person is developmentally disabled and, instead, has left it to the states to craft their own laws and tests.[27]

---

the court concluded that there was insufficient evidence to prove the officers knew or should have known he was developmentally disabled. *Id.* at 1127 n.4.

[24] *See* Morris, *supra* note 11, at 298.

[25] AM. PSYCHIATRIC ASS'N, *supra* note 12, at 42.

[26] *Id.* at 43. Individuals with mild mental retardation often go unnoticed by the casual observer. Cloud et al., *supra* note 19, at 510. These individuals have an IQ between 55–70 and can live successfully either independently or with supervision. *Id.*

Each person who intends to become a law enforcement officer in Minnesota must complete the pre-service education and training, apply for and pass the Peace Officer Licensing Examination or the Reciprocity Licensing Examination, and must meet the peace officer selection standards and be appointed by a law enforcement agency. *See generally Minnesota Police Academies*, POLICE LINK, http://policelink.monster.com/content/become-a-cop-in-minnesota-police-academy-directory (last visited Mar. 29, 2014); Telephone Interview with John Wahlberg, Peace Officer, North Saint Paul, MN (Apr. 10, 2013). A law enforcement instructor at the Alexandria Technical College Police Academy ("ATCPA") confirmed that, as of 2013, "pre-service instruction" at ATCPA does not include information regarding how to recognize either developmentally disabled or mentally ill individuals who do not manifest physical characteristics of either group. Telephone Interview with Duane Wolfe, Law Enforcement Instructor, ATCPA, Alexandria, MN (Apr. 9, 2013). He commented that there is "some information" given regarding how to deal with mentally ill suspects, but not a formal course dedicated to it. *Id.* Additionally, Officer Wolfe noted that there has been a "big push" over the past few years to require more "in-service instruction" regarding how to handle mentally ill people, but so far no major changes have been made to "in-service instruction" regarding instruction on developmentally disabled individuals. *Id.* There is, however, instruction provided on standard interrogation tactics to be used on suspects. *Id.* Officer Wahlberg agreed that more training needs to be provided to officers regarding developmentally disabled individuals because, until the author informed him of how difficult it is to identify a developmentally disabled individual who does not have obvious physical characteristics, he was unaware this problem even existed. Telephone Interview with John Wahlberg. Once the author informed him of the cases and scholarship documenting how frequently officers interrogate developmentally disabled individuals without realizing it, he became very interested in what types of training could help combat this and expressed support for the idea of implementing such training. *Id.*

[27] *Atkins*, 536 U.S. at 317 (stating that in the context of the death penalty, it is the states' responsibility to determine whether someone is developmentally disabled and exempt from or not subject to the death penalty); *see also* Cloud et al., *supra* note 19, at 507–08 (explaining that "[f]or centuries, Anglo-American law has recognized that some legal standards of general application cannot be applied to mentally retarded people," and that tests were developed to determine whether someone was an "idiot" or "imbecile" and therefore not subject to usual legal standards). For example, the "Twenty Pence Test" was used in the early part of the twentieth century, dating back to the Middle Ages, to determine whether someone was developmentally disabled. *Id.* (citing S. SHELDON GLUECK, MENTAL DISORDER AND THE

Officers and others involved in the criminal justice system also struggle to recognize the differences between a person who is developmentally disabled and one who is mentally ill.[28] For example:

> Unlike mental illness, which is often temporary, cyclical, or episodic, mental retardation is permanent; while the consequences of mental retardation can be ameliorated through education and "habilitation," it has no cure. Thus, unlike individuals suffering from mental illness, mentally retarded persons' social and intellectual abilities are essentially fixed; a mentally retarded person will be no better able to resist coercive interrogation or comprehend a waiver form after a few days rest than he or she was before.[29]

Additionally, mentally ill people encounter disturbances in their thought processes and emotions, while developmentally disabled individuals suffer from limited abilities to learn.[30] Whether an officer is interrogating a person who is developmentally disabled, mentally ill, or of ordinary intelligence, the problem remains: how will officers know to treat them differently if the officers cannot first recognize that there is a distinction to make? The resulting consequence, which is equally problematic, is that when officers are unable to identify developmentally disabled individuals, they use the same interrogation tactics as they would on individuals of ordinary intelligence, which inevitably results in a high rate of involuntary waivers and false confessions.[31]

CRIMINAL LAW 128 (Little, Brown 1925 (quoting A. FITZHERBERT, *NATURA BREVIUM* (1534)). Under this test, an "idiot" was someone who could not count twenty pence, tell who his mother or father were, how old he was, or what things in life were of value to him. *Id.* But, if he could read, generally that was a sign he was not an "idiot." *Id.*

[28] Paul T. Hourihan, Note, *Earl Washington's Confession: Mental Retardation and the Law of Confessions*, 81 VA. L. REV. 1471, 1492 (1995). Officer Wahlberg expressed that he was unaware how often the two groups of people are confused, which became clear when he realized that each time the author asked him about his experience with developmentally disabled individuals, he responded with stories of dealing with mentally ill people. Telephone Interview with John Wahlberg, *supra* note 26.

[29] Hourihan, *supra* note 28, at 1492; *see* James W. Ellis & Ruth A. Luckasson, *Symposium on the ABA Criminal Justice Mental Health Standards: Mentally Retarded Criminal Defendants*, 53 GEO. WASH. L. REV. 414, 424 (1985) (citing Durham v. United States, 214 F.2d 862, 875 (D.C. Cir. 1954) ("We use 'disease' in the sense of a condition which is considered capable of either improving or deteriorating. We use 'defect' in the sense of a condition which is not considered capable of either improving or deteriorating and which may be either congenital, or the result of injury, or the residual effect of a physical or mental disease"), *abrogated on other grounds by* United States v. Brawner, 471 F.2d 969 (D.C. Cir. 1972)).

[30] Ellis & Luckasson, *supra* note 29, at 424.

[31] *See, e.g.*, *Faris*, 901 N.E.2d at 1127 ("One of the officers testified that if she had suspected Faris had a mental disability, she would have terminated the interview and sought further guidance on how to proceed from the prosecutor's office.").

B. How Vulnerability During Police Interrogations Results in Involuntary Waivers and False Confessions

1. Standard Police Interrogation Tactics

Police officers often engage in a variety of tactics during an interrogation to learn the truth, which may or may not result in a confession.[32] Most individuals are reluctant to simply admit guilt without any probing from officers, and therefore suspects must frequently be psychologically persuaded to confess to the crimes they have committed.[33] Trickery and deceit are two primary interrogation methods that are permitted to obtain information from suspects.[34] Another tactic often used is presenting the suspect with leading questions that provide multiple options for why a suspect committed the crime, all of which may elicit an admission of guilt.[35]

One set of scholars, Drizin and Leo, explained an interrogation as a two-step process, where the first step is designed to shift the suspect from confident to hopeless, and the second elicits the confession by persuading the suspect that the benefits of compliance outweigh the costs of resistance or denial.[36] In the first step, the officer will try to convince the suspect that everyone knows he or she is guilty and there is nothing he or she can do to change the situation.[37] In the second step, the officer will attempt to convey that the only way for the suspect to improve his or her situation is to admit to some form of guilt.[38] To accomplish this, the officer will present the suspect with the idea that some sort of moral, procedural, or legal benefit will be

---

[32] INBAU ET AL., *supra* note 21, at 8 (explaining the purpose of an interrogation).

[33] *Id.* at 484.

[34] *Id.* at 484–86. These tactics cannot be of such a nature that would "shock the conscience" of either the court or surrounding community, or be likely to induce a false confession. *Id.* at 486.

[35] *Id.* at 358–60.

[36] Drizin & Leo, *supra* note 11, at 915 (citing Richard A. Leo & Richard J. Ofshe, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DEN. U. L. REV. 979, 1004–50 (1997)).

[37] *Id.* The focus is on accusation, dismissive behavior, and ignoring assertions of innocence from the suspect. *Id.* Alibis are frequently attacked as inconsistent or impossible, even if the officer does not believe that to be the case. *Id.* The most persuasive tactic is to present the suspect with "objective and incontrovertible evidence of his or her guilt, whether or not any actually exists." *Id.* (citing Stephen Moston et al., *The Effects of Case Characteristics on Suspect Behaviour During Police Questioning*, 32 BRIT. J. CRIMINOLOGY 23, 34–39 (1992)). "American police often confront suspects with fabricated evidence, such as nonexistent eyewitnesses, false fingerprints, make-believe videotapes, fake polygraph results, and so on." *Id.* When the officers actually have evidence, they will often portray it as conclusive of guilt, even if that is not the case. Drizin & Leo, *supra* note 11, at 915 (citing Leo & Ofshe, *supra* note 36, at 1004–50).

[38] *Id.* at 915–16.

received if he or she confesses, or be faced with the cost of legal consequences if he or she does not.[39]

When these tactics are used to interrogate a developmentally disabled individual, that individual will frequently succumb to the psychological pressures and give a false confession, regardless of how ineffective the tactics may be on a person of ordinary intelligence.[40] The problem becomes even worse when, in addition to standard interrogation tactics, police engage in outright coercive tactics, which will become clear in the *Singletary* case illustrated below.

2. Recommended Interrogation Tactics for Questioning the Unintelligent, Uneducated, and Handicapped

The authors of *Criminal Interrogation and Confessions* recommend that when interrogators are questioning an unintelligent, uneducated, or handicapped suspect, questioning tactics frequently used on children should be employed.[41] Officers should speak in simple terms, maintain a positive attitude, and should not state a certainty of the suspect's guilt.[42] Investigators should not try to convince the suspect he or she is guilty, threaten consequences of guilt or denial, or promise good outcomes because defense attorneys often point to such tactics when challenging the validity of a confession for these types of suspects.[43] Additionally, officers must make sure that before an interrogation begins, a suspect has been read and waived his or her *Miranda* rights.[44]

3. Obtaining Valid Waivers of Miranda *Rights*

To obtain a valid waiver of a suspect's Fifth Amendment rights to remain silent and to have an attorney present during questioning ("*Miranda* rights"), two elements must be met: (1) the waiver must be "voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception," and (2) the waiver must be knowing and intelligent, meaning it was "made with a full awareness of both the

---

[39] *Id.*

[40] Guo, *supra* note 11, at 45. Developmentally disabled suspects are more susceptible to police coercion than ordinary offenders. *Id.* ("In the U.S., post-conviction DNA testing has exonerated a number of convicts on death row. Among them, the mentally disabled account for a high percentage because they were more vulnerable to the psychological pressures applied during police interrogation and thus more likely to make false confessions." (citations omitted)); *see, e.g.*, *Singletary II*, 365 F. Supp. 2d 328 (suspect maintained his innocence throughout the entire interrogation, but eventually signed a false confession).

[41] INBAU ET AL., *supra* note 21, at 403.

[42] *Id.* at 404.

[43] *Id.* at 405.

[44] *See* Moran v. Burbine, 475 U.S. 412, 420–22 (1986) (citing Miranda v. Arizona, 384 U.S. 436, 467–70 (1966)); INBAU ET AL., *supra* note 21, at 490–91.

nature of the right being abandoned and the consequences of the decision to abandon it."[45] When examining the voluntariness of a waiver, the court focuses strictly on whether any form of police coercion was involved.[46] Additionally, a person's developmental disabilities are consistently a factor in the analysis of the "voluntariness" of a waiver, while courts tend to give comparatively less weight to a person's mental illness in that analysis.[47]

As illustrated below, proving that a waiver made by a developmentally disabled suspect was voluntary, knowing, and intelligent can be a difficult task, especially given these individuals' hallmark characteristic of showing deference to authority figures. Additionally, empirical studies have shown that developmentally disabled individuals frequently do not understand their *Miranda* rights or the concepts behind them.[48]

---

[45] Berghuis v. Thompkins, 560 U.S. 370, 382 (2010) (quoting *Moran*, 475 U.S. at 421).

[46] Colorado v. Connelly, 479 U.S. 157, 169–70 (1986). In *Connelly*, the defendant suffered from schizophrenia and approached a police officer on the street to confess for the crime of murder. The court held that the fact that the defendant claimed he confessed at the direction of the "voice of God" was not sufficient to render his waiver involuntary because no police coercion was involved. *Id.* at 170–71. Furthermore, for a waiver to be knowing and intelligent, the state must prove by a preponderance of the evidence that the suspect understood his rights. *Id.* at 168. The Supreme Court has never held that developmentally disabled suspects, by the very nature of their development, are unable to waive their right to counsel or incapable of giving voluntary confessions. Young v. Walls, 311 F.3d 846, 849 (7th Cir. 2002).

[47] *Ives*, 648 A.2d at 134–35 (noting that the factors relevant to determining whether a waiver was voluntary include a person's "experience, *education*, background, *intelligence* or *capacity to understand* the warnings and meaning of a waiver" (emphasis added) (citations omitted)). *Compare Walls*, 311 F.3d 846 (considering whether the defendant's low IQ affected his ability to comprehend and waive his *Miranda* rights), *and Ives*, 648 A.2d at 131 (considering whether the defendant's borderline mental retardation affected his ability to understand and waive his *Miranda* rights), *with Connelly*, 479 U.S. at 170–71 (rejecting the notion that the suspect's confession was involuntary simply because it was the result of his mental illness). The Supreme Court has held that although a defendant's mental illness may be considered as a factor in the voluntariness inquiry, the mental illness alone without police coercion is not sufficient to establish that a waiver was involuntary. *Connelly,* 479 U.S. at 164; State v. Bilodeau, 992 A.2d 557, 560 (N.H. 2010) (reasoning mental illness may be considered for determining whether police exercised coercive tactics, but "[m]ental illness does not, as a matter of law, render a confession involuntary" (citations omitted)). Furthermore, Officer Wahlberg stated that when he knows he is dealing with a developmentally disabled individual, he is much more sympathetic to their situation and goes out of his way to ensure they understand what is happening to them, as compared to when he handles mentally ill individuals. Telephone Interview with John Wahlberg, *supra* note 26. He stated that dealing with mentally ill individuals is much more challenging given the unpredictability of how their illness will make them act, which frequently puts officers on the defensive and concerned for their own safety, as opposed to finding sympathy for the individuals. *Id.*

[48] Cloud et al., *supra* note 19, at 501.

4. Realities of False Confessions and the Waiver of Miranda *Rights*

a. Earl Washington

Earl Washington, Jr., was a 23-year-old African American male who was mildly developmentally disabled with an IQ of 69.[49] In 1984, he confessed, was convicted, and sentenced to death for capital murder subsequent to the commission of rape ("the Williams murder").[50] After exhausting all appeals regarding the voluntariness of his confession, DNA evidence later confirmed he could not possibly have raped Williams, and he received a pardon from the Governor of Virginia.[51]

One year after the Williams murder initially occurred, Washington was arrested for an unrelated burglary where he was ultimately questioned about the Williams murder.[52] The morning Washington was arrested for the burglary, he was read his *Miranda* rights, said he understood them, and agreed to talk without a lawyer about the burglary.[53] During a second interrogation that same day, Washington was again read his *Miranda* rights, said he understood them, and the officers told him they wanted to talk to him about a woman that had been "stabbed" one year earlier.[54] Washington was clearly nervous, began to shake and cry, and proceeded to describe Williams and said he "stuck her with a knife a few times."[55] Although Williams had also been raped, the officers did not tell Washington this, nor did he mention it during this confession.[56]

The following day, officers conducted another interrogation where Washington was again read his *Miranda* rights, said he understood them, and signed a waiver form.[57] After Washington signed the waiver of his rights, he began giving his confession, but many inconsistencies appeared throughout his recitation of the events.[58] For example, at first he said the victim was African American when she was actually Caucasian.[59] He then said he followed the victim into her apartment by kicking in the door, when in fact

---

[49] Washington v. Commonwealth, 323 S.E.2d 577, 584 (Va. 1984) [hereinafter *Washington I*]; Washington v. Buraker, 322 F. Supp. 2d 702, 707 (W.D. Va. 2004) [hereinafter *Washington II*].

[50] *Washington I*, 323 S.E.2d at 581.

[51] *Washington II*, 322 F. Supp. 2d at 707.

[52] *Id.* at 705–06. The only description Williams gave before she died was that she was attacked by an African American male who was a stranger and acting alone. *Washington I*, 323 S.E.2d at 581.

[53] *Washington II*, 322 F. Supp. 2d at 706; *Washington I*, 323 S.E.2d at 582.

[54] *Washington I*, 323 S.E.2d at 582.

[55] *Id.* Washington described how he fled the scene, disposed of the knife, and, in general, that it had been eating away at him; and, he felt better after confessing. *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] *Washington I*, 323 S.E.2d at 582. He later corrected himself. *Id.*

the door had not been kicked in.[60] Additionally, he said that he only stabbed her once or twice, when she was actually stabbed thirty-eight times.[61]

At trial, Washington took the stand and denied everything, stating that the officers had lied in their testimony.[62] An issue was brought up regarding whether he actually understood the waiver form, despite his insistence during the interrogation that he did.[63] The trial record ultimately showed that Washington could not understand the waiver form or the concept of a waiver.[64] Washington's defense attorney showed him a copy of his waiver and asked whether he had ever seen it before, to which Washington said he had.[65] The following exchange took place between Washington and his attorney:

> Q: What is it?
> A: Something about your rights.
> Q: Well, no, you said it's something . . .
> A: I know it's . . .
> Q: . . . about your rights. How do you know that?
> A: Well, it got one word and then it says of, of rights.
> Q: Got a word and then it says . . .
> A: I don't understand that.
> Q: . . . of rights. What's the next line? Read it to me.
> A: Says, before we ask you any ques . . . questions, you must under . . . understand your rights.
> Q: All right. Now, it says something on that paper about a lawyer?
> A: Says if, if you cannot afford a lawyer, one will be . . . I don't understand that word . . . for you before any questions if you wish.
> Q: Now, did [the deputy] read you that piece of paper, [the deputy] read that piece of paper to you on the morning of the 22nd?
> A: Yes, sir.
> Q: And did he ask if you understood it?

---

[60] *Id.*

[61] *Id.* During this interrogation, it came up that Williams had been raped, and Washington began to describe how he forced her to undress and have sex with him while he held a knife to her. *Id.* DNA evidence ultimately proved he could not possibly have had sex with her based on the sample of semen collected during the medical examination. *Id.* The officers then brought him to the scene of the crime past multiple apartment complexes, which he first said looked unfamiliar, but then identified. *Id.* at 583. He also showed the officers the field where he allegedly threw away the knife, but the knife was never found. *Id.*

[62] *Washington I*, 323 S.E.2d at 583. He admitted to signing the confession, but had no recollection of what it said and argued it must have been false. *Id.*

[63] *Id.* at 585–86.

[64] Hourihan, *supra* note 28, at 1497.

[65] *Id.*

> A: Yes, sir.
> Q: On the morning of the 22nd of May of 1983, what would a lawyer have done for you?
> A: I don't know, really don't know.
> Q: Why do you think there are words on that piece of paper about a lawyer?
> A: I don't really know.[66]

Washington was ultimately convicted, and on appeal the court rejected his arguments that his confession was coerced, stating the police engaged in no coercive tactics.[67] In fact, the court recognized that there was no evidence offered to suggest the interrogating officers actually knew Washington was developmentally disabled prior to or during the interrogation.[68] To the contrary, there was ample evidence to show that despite arguments that Washington did not understand the *Miranda* warnings, he attempted to compensate for his cognitive disabilities by acting as though he understood things when he did not, and by giving deference to authority.[69]

Washington's case is widely cited as evidence of how developmentally disabled individuals frequently defer to authority figures even in the absence of coercion, have difficulty understanding *Miranda* rights and the concept of waiver, and have a tendency to voluntarily give false confessions to crimes they clearly did not commit. This case also illustrates that the deficiency in police education of developmentally disabled individuals results in the use of standard interrogation tactics, which have a dramatically different effect on these individuals compared to those of ordinary intelligence. Additionally, it highlights how developmentally disabled suspects process information provided to them by police officers,

---

[66] *Id.* at 1497–98. The word Washington did not understand was "appoint." *Id.* at 1498–99.

[67] *Washington II*, 322 F. Supp. 2d at 714. Washington argued his confession was coerced simply because he had been drinking the night before the first interrogation, had not slept, and was developmentally disabled. *Id.* The court disagreed and stated that the police were not responsible for any of these three conditions. *Id.* The court reasoned he was "warned of his *Miranda* rights before the interrogation began. There is no evidence that Washington suffered physical or psychological abuse at the hands of the interrogating officers. To the contrary, there is evidence that Washington was not made any promises during his interview in exchange for his confession." *Id.* Additionally, he was allowed to sleep before the third interrogation because he had been awake the entire evening before. *Washington I*, 323 S.E.2d at 582.

[68] *Washington II*, 322 F. Supp. 2d at 713.

[69] *Id.* Regarding the involuntariness of his confession, the Virginia Supreme Court essentially ignored the trial transcript, and instead relied on expert testimony that stated Washington possessed the capacity to understand and waive his rights. Hourihan, *supra* note 28, at 1498.

and how their confessions will frequently focus only on information provided by police, rather than based on independent knowledge.[70]

b. Charles Singletary

Charles Singletary was a 40-year-old mild developmentally disabled individual with an IQ of approximately 63 when he was convicted of murdering his niece in 1995.[71] Growing up, Singletary had been labeled a "non-learner" in the public school system, attended special education classes, and was completely illiterate with the exception of his ability to sign his own name.[72] Two years after the murder of his niece, he was told by his aunt that the police had come to his apartment looking for him.[73] When he arrived at the police station, Singletary was asked whether he knew why he was there, to which he responded, "[T]o take prints to be cleared of my niece's murder."[74] The police officer corrected him and said, "No, you're here because we're holding you as a suspect for your niece's murder."[75]

The officer began the interrogation with a standard accusatory tone, accusing Singletary of having "burn marks" on his hands from strangling his niece two years earlier.[76] Singletary denied the accusation.[77] The officer then

---

[70] *See, e.g.*, Wilson v. Lawrence Cnty., 154 F.3d 757, 758–59 (8th Cir. 1998). Wilson, a developmentally disabled individual, received a pardon after spending more than nine years in prison for murder when an extensive investigation revealed that he had given a false and inaccurate confession to police officers who were eager to solve the case. The pardon letter explained that any facts Wilson confessed to were provided to him by the officers, and any effort to provide his own version of facts proved to be inaccurate and inconsistent with known facts. *Id.* at 759. Furthermore, there was no evidence to corroborate or substantiate Wilson's confession. *Id.*

[71] *Singletary II*, 365 F. Supp. 2d at 331. This case was presented in the form of a petition for writ of habeas corpus for a ruling on the adequacy of the defendant's counsel at his state trial for failing to properly explore the falsity of his confession, which was obtained through police interrogation using trickery. *Id.* at 329. The court did not rule on whether the confession was in fact false, however, it alluded to such a finding when it stated that "[w]ere this a bench trial before this court it would give little weight to the confession and would be compelled to find the petitioner not guilty." *Id.* at 337. The court also noted that the confession was the only evidence of guilt, and the defendant's attorney failed to meet minimum constitutional standards when he did not pursue an investigation over the validity of the confession, given the manner in which it was obtained. *Id.*at 337–38. The court vacated the defendant's conviction. *Id.* at 338.

[72] *Id.* at 331. The expert at trial testified that Singletary could not read the words "bed," "ship," or "penny." *Singletary II*, 365 F. Supp. 2d at 333. Singletary also only held menial jobs, his most recent before conviction being "park caretaker," and he had never been convicted of another crime. *Id.* at 331.

[73] *Id.* Singletary lived with his aunt in an apartment across the hall from his niece. Singletary v. Fischer, 227 F.R.D. 209, 214 (E.D.N.Y. 2003) [hereinafter *Singletary I*].

[74] *Singletary II*, 365 F. Supp. 2d at 332.

[75] *Id.*

[76] *Id.* At trial, Singletary stated, "I don't know what kind of burn marks he was talking about, he never explained it to me . . . . I kept telling him 'I don't know what you're talking about. I never committed any crime.'" *Id.*

[77] *Id.*

asked Singletary whether he could read, to which Singletary said he could not, so the officer proceeded to read him his *Miranda* rights orally.[78] The officer did not show Singletary the piece of paper because he had just maintained that he could not read or write.[79] The officer left the room briefly and, upon returning, had Singletary sign the piece of paper.[80]

The officer then began showing Singletary pictures of his deceased niece and asking him questions about her murder, for example, whether he knew what she was wearing.[81] Singletary kept saying he did not do it and guessed the officer accused him of doing it for money.[82] Singletary said the officer assured him nobody would believe him and said, "Who they gonna believe, the white man with the badge or the black man on welfare?"[83] Singletary continued to maintain his innocence, even when the officer ordered him to get on his knees, cry, and admit to his sister that he killed her daughter by accident and not on purpose.[84] When his sister never came, the officer said as an alternative, Singletary needed to make a videotape.[85] When Singletary asked the officer what the tape was supposed to be about, the officer said it was to be of him "confessing to killing [his] niece Cassandra," to which Singletary responded "no," and the officer said, "if you don't make the tape you're going to jail."[86] After this exchange, Singletary ultimately gave in to the psychological pressures and made a videotaped confession of how he had killed his niece.[87] When Singletary told the officers he did not know what to say for why he did it, an officer told him to say he did it for money.[88]

---

[78] *See Singletary II*, 365 F. Supp. 2d at 332.

[79] *See id.*

[80] *Id.* ("Before he left the room he had two sheets of paper in his hand . . . . [H]ow do I know he got me to sign the paper he raed [sic] from or not? It had words on it but I don't know what it was."). While the officer posed the "yes" or "no" question to Singletary of whether he understood his *Miranda* rights, there was no evidence that the officer engaged in further dialogue to determine whether Singletary actually comprehended the warnings, or was simply saying "yes" to a question he did not fully understand. *Id.*

[81] *Id.*

[82] *Id.*

[83] *Id.* According to Singletary, the officer then told him if he went the officer's "way," Singletary could get into a 24-month-long drug program and then be a free man, and if not, "he could fix it to look like [Singletary] committed the crime and [Singletary] could go to jail for a long time." *Singletary II*, 365 F. Supp. 2d at 332.

[84] *Id.* ("I kept telling him I didn't do it, but he kept telling me I did."). The officer testified at trial that he had lied to Singletary when he told him his family thought he was guilty. *Singletary I*, 227 F.R.D. at 215. The officer said the family would forgive Singletary and support his "rehabilitation," referring to drug rehabilitation. *Id.* The officer denied all accusations at trial that he had "scared" or intimidated Singletary into making false statements. *Id.*

[85] *Singletary II*, 365 F. Supp. 2d at 332–33.

[86] *Id.*

[87] *Id.* at 333.

[88] *Id.* Singletary hoped his sister would know it was a lie because Cassandra never left money lying out at her apartment. *See id.*

During the trial, an expert testified that Singletary's sentences on the videotape were simple and did not provide many details, the questions were simple and elicited unelaborated responses, and much of what he said was extremely general.[89] Additionally, the expert testified that although Singletary did not tell the interrogating officers he was developmentally disabled, the officers should have known based on his inability to read or write that he was not of ordinary intelligence.[90] Singletary was ultimately convicted despite the expert's testimony, the obvious suspicions about how the confession was obtained, and his status as developmentally disabled.[91]

This case is another example of how easy it is to obtain an invalid waiver from a developmentally disabled individual, especially when the officers do not outright know the suspect is developmentally disabled. Furthermore, it illustrates how vulnerable these individuals are to the psychological pressures of police interrogations when standard tactics are used, and even more so when actual coercive tactics are used to obtain a confession. Aside from the points where the officer actually told Singletary what to say and how to act during his confession, the majority of the tactics used were standard tactics engaged in during routine interrogations of suspects who are not developmentally disabled.[92]

5. Dan Young: Realities of Developmentally Disables Suspects Who Are Guilty, Able to Waive Their Rights, and Give Valid Confessions

Developmentally disabled individuals are capable of committing crimes and, thus, cannot be exempt from waiving their rights or confessing to crimes simply because their moral culpability may be lessened due to their condition.[93] The case below illustrates why the idea of categorical protection has been rejected by the Supreme Court because not *all* developmentally disabled individuals give false confessions.[94] To the contrary, those who are capable of understanding their rights should not be able to use their developmental disabilities as an excuse exempting them from all punishment for crimes they have committed.

---

[89] *Id.* As an example, the expert pointed to Singletary's statements, "'I was hanging out on the street. I wanted to get high and wanted to get money from her . . . . She wanted to use her money for what she wanted to use [it] for.'" *Singletary II*, 365 F. Supp. 2d at 333.

[90] *Id.* at 333–34.

[91] *See supra* note 71 (explaining the context of the case and how Singletary's conviction was eventually vacated).

[92] *See supra* notes 36–39 and accompanying text (explaining standard interrogation tactics include dismissing claims of innocence, lying, and overstating the likelihood of obtaining a conviction).

[93] *See supra* note 11 (explaining that, in *Atkins*, the court reasoned that although their culpability is lessened, developmental disability is still a factor of consideration).

[94] *See supra* note 46 and accompanying text (explaining that the Supreme Court refuses to hold developmentally disabled individuals incapable of waiving their rights or confessing).

Dan Young was a mild developmentally disabled individual with an IQ of 56 who had difficulty understanding abstract concepts.[95] When left to care for himself, he had a history of being uncontrollably violent, which caused him to have multiple run-ins with the legal system.[96] In 1994, Young was found guilty for the crimes of raping and murdering a woman and was sentenced to life in prison.[97] Young's conviction was based on his confession and corroborating evidence of his dental records that matched a bite mark found on the victim.[98] Young appealed, arguing his confession should have been suppressed because his inability to understand his *Miranda* rights precluded him from giving an effective waiver, which "require[d] him to be freed."[99] The court rejected this argument, reasoning that although he struggled with basic general knowledge and had poor speaking skills, Young's waiver was "knowing" based on his concrete knowledge that a "PD" referred to a public defender and of what a trial was for, even though he could not explain how a jury works.[100] Additionally, the court expressed its confidence in finding a valid waiver when it reasoned, "[H]e has concrete knowledge suited to his occupation as a career criminal . . . ."[101]

C. Existing Proposals and Practices to Limit Involuntary Waivers and False Confessions

1. Improving Police Education

Scholars Drizin and Leo proposed training police officers how to better identify developmentally disabled individuals so that proper measures can be taken during an interrogation to prevent an involuntary waiver or false confession.[102] At least one police department in Florida ("Florida Department") has adopted this approach and requires that all detectives receive annual specialized training in how to spot the characteristics of a developmentally disabled suspect and how to properly interrogate them.[103]

---

95 *Walls*, 311 F.3d at 847.

96 *Id.*

97 United States *ex rel.* Young v. Snider, No. 01 C 6027, 2001 WL 1298704, at *2 (N.D. Ill. Oct. 25, 2001) [hereinafter *Snider*]. The appeals court noted that this punishment was essential to protect society and to incapacitate Young because he appeared completely undeterrable. *Walls*, 311 F.3d at 847–48.

98 *Walls*, 311 F.3d at 847. Young was also implicated by a related confession made by his co-participant in the crimes. *Snider*, 2001 WL 1298704, at *1.

99 *Walls*, 311 F.3d at 848.

100 *Id.* at 849–50. Young could not explain what seasons were, but he knew that winter meant cold weather and snow; he could not count backwards; and when asked to name presidents who served after 1950, he said "Washington" and "Lincoln." *Id.* at 849.

101 *Id.* at 850.

102 Drizin & Leo, *supra* note 11, at 1003–04.

103 *Id.* The North Saint Paul Police Department, North Saint Paul, MN, has made steps to improve the training and education of its police officers in general; however, given the limited amount of budgetary resources of that police department, and police departments

2. Taking Special Steps to Ensure the Voluntariness of a Waiver

When police officers read developmentally disabled individuals their *Miranda* rights, empirical studies have shown that the individuals are unable to understand the basic principles of their rights and thus frequently waive them in an effort to appear cooperative with the authority figure before them.[104] Scholars and student authors have advocated for changes in how police officers explain *Miranda* rights to developmentally disabled individuals. One solution is to take time to more fully explain the rights by speaking slowly and clearly.[105] The Florida Department requires interrogators to ensure the suspect's comprehension of the rights by asking the suspect to explain what he thinks they mean before he can waive them, in lieu of accepting simple "yes or no" answers.[106]

Other suggested solutions entail implementing procedures at police departments that require special steps to be taken when interrogating developmentally disabled individuals. For example, the Florida Department has implemented a policy that requires officers to immediately notify their supervisors before interrogating a developmentally disabled suspect.[107] After the interrogation is complete, each suspect must undergo a "Post Confession Analysis" administered by either a unit supervisor or by a "team" comprised of a psychologist, an assistant state's attorney, and a Criminal Investigator to ensure a valid waiver and a reliable confession has been obtained.[108] This evaluation consists of assessing the suspect's description of places and events, whether he was able to offer non-public information about the crime, and whether he offered information that led police to the discovery of previously undiscovered evidence.[109]

---

in general, can devote to training, generally one officer will attend a local or out of state training and return to share the information with the rest of the officers. Telephone Interview with John Wahlberg, *supra* note 26. However, police training involving how to deal with difficult suspects generally involves information about mentally ill individuals rather than developmentally disabled individuals. Drizin & Leo, *supra* note 11, at 1004.

[104] Drizin & Leo, *supra* note 11, at 1004; Cloud et al., *supra* note 19, at 495–96; Bretz, *supra* note 19, at 245.

[105] Morris, *supra* note 11, at 298; Drizin & Leo, *supra* note 11, at 1004. In *Walls*, psychiatrists testified that a person with an IQ of 56 would be able to comprehend *Miranda* warnings if they were "made sufficiently simple and the suspect's responses [were] elicited with care." *Walls*, 311 F.3d at 849.

[106] Drizin & Leo, *supra* note 11, at 1004.

[107] *Id.*

[108] *Id.* A "team" only conducts the evaluation when there is no evidence to corroborate the confession. *Id.*

[109] *Id.* at 1004–05.

3. Employing Special Interrogation Tactics to Avoid Eliciting a False Confession

Scholars and student authors have proposed and supported efforts by police officers to use specific interrogation tactics when interrogating developmentally disabled individuals that are different from those used on individuals of ordinary intelligence. For example, it has been argued that officers should avoid asking leading questions to developmentally disabled individuals because, due to their eagerness to please authority figures, they frequently agree with suggested or implied answers regardless of their accuracy.[110] The Florida Department has implemented new department policies where officers receive training on how to avoid asking leading questions.[111] Additionally, police officers should not lie about evidence or other facts to a developmentally disabled individual because false statements appearing to establish guilt are likely to result in false confessions.[112]

4. Videotaping Confessions

Some scholars have argued that all interrogations should be videotaped, especially those involving vulnerable suspects like the developmentally disabled.[113] They argue that videotaping will help to accurately convey what occurred during the interrogation, increase the reliability of confessions as evidence, and prevent wrongful convictions.[114] Studies have shown that once police departments implement videotaping as a standard procedure, police and prosecutors readily favor the practice because it reduces the claims of mistreatment during interrogations and the number of motions to suppress evidence.[115]

---

[110] *Id.*; Morris, *supra* note 11, at 298.

[111] Drizin & Leo, *supra* note 11, at 1004.

[112] Morris, *supra* note 11, at 298.

[113] Brandon L. Garrett, *Trial and Error: Learning from Patterns of Mistakes*, 26 CRIM. JUST. 30, 34 (2012); Gail Johnson, *Commentary: False Confessions and Fundamental Fairness: The Need for Electronic Recording of Custodial Interrogations*, 6 B.U. PUB. INT. L.J. 719, 749–50 (1997).

[114] Garrett, *supra* note 113, at 34. In 1997, a survey of U.S. police departments revealed that videotaping interrogations improved the quality of the interrogation, there was a decrease in the number of allegations of improper interrogation tactics being used, and it encouraged guilty pleas. Johnson, *supra* note 113, at 750.

[115] Garrett, *supra* note 113, at 34 (reporting that more than 750 law enforcement jurisdictions in the U.S. videotape interrogations). As early as 1997, a study reported that 16.4% of U.S. police departments videotaped at least some interrogations. Johnson, *supra* note 113, at 749–50.

III. ANALYSIS

A. Proposals to Limit Involuntary Waivers and False Confessions

The primary problem developmentally disabled individuals face during interrogations is that police officers do not know the individuals are developmentally disabled. As a result, police officers administer the *Miranda* warnings and use the same interrogation tactics used on individuals of ordinary intelligence, resulting in a high rate of involuntary waivers and false confessions by developmentally disabled individuals. Thus, steps need to be taken to ensure police officers recognize these individuals and verify their comprehension of the *Miranda* rights before the interrogation for the crime begins.

1. Improving Police Education with "Pre-Service" and "In-Service" Training

Police officers should be required to complete training regarding the complexities of interrogating a developmentally disabled individual. [116] The training should include basic instruction regarding what it means to be developmentally disabled and how it differs from mental illness.[117] Scholars Drizin and Leo's proposal to improve police education was an exceptional idea in theory, but it failed in practice to articulate exactly how or where officers should be educated, as did its example involving the Florida Department. [118] Furthermore, Drizin and Leo only focused on training that licensed, "in-service" officers should receive, but neglected to address how to train unlicensed, "pre-service" officers, which is of equal importance.[119]

The first step to solving the problem of involuntary waivers and false confessions begins with improving police education at the inception of all officer training at the state police academies.[120] When officers attend a police academy before becoming a licensed police officer, they should be required to take a course on the fundamentals of developmental disability and the common characteristics associated with developmental disability. More importantly, they should receive training in how to identify those who do not

---

[116] *See supra* note 26 and accompanying text (explaining how officers in Minnesota do not receive any training on how to interact with developmentally disabled individuals).

[117] *See supra* notes 28–29 and accompanying text (explaining the differences between the two groups and the frequent confusion between them among police officers, judges, and others involved in the criminal justice system).

[118] *See supra* text accompanying notes 102–103 (explaining Drizin & Leo's proposal to improve police education).

[119] *See supra* text accompanying notes 102–103 (explaining Drizin & Leo's proposal to improve police education).

[120] *See supra* note 26 (explaining that all aspiring police officers must complete the necessary educational training at the state police academies).

have outward physical characteristics commonly associated with developmental disability.[121]

Above all, officers must be educated on developmentally disabled individuals' predisposition to agreeing with authority figures.[122] Because most suspects are not eager to admit guilt, officers should be aware of reasons that could account for a suspect who is overly cooperative, like developmental disability.[123] Additionally, officers should receive education regarding common lifestyle habits and decreased abilities to live independently or retain non-menial jobs.[124] Such information could assist officers in differentiating between individuals who live with others and retain menial jobs by *choice*, from those who do so out of *necessity* due to developmental disability. One final component of the training course should involve instruction on how to properly interrogate a developmentally disabled individual in such a way that he or she will not be susceptible to giving a false confession.[125] Requiring this training to begin "pre-service" at the police academy will ensure all future police officers are fully educated on this topic prior to becoming "in-service" officers.

The next step is to require "in-service" officers to attend either annual or biannual training seminars as a requirement of maintaining status as a licensed police officer. Although officers are required to attend forty-eight hours of specified training every three years to remain licensed, most of that training is centered on firearms safety and similar training, instead of interrogation tactics.[126] The required training should specifically provide information regarding developmentally disabled individuals as well as mentally ill individuals, since the two groups are often confused.[127] Such training will ensure that police officers keep abreast of any changes or developments in tactics that should be used to either identify developmentally disabled individuals or interrogate them. As a practical matter, the continuing education aspect should be available either in person or online, given the remote locations of some police departments in the

---

[121] *See supra* notes 23–26 and accompanying text (explaining the difficulties of identifying developmentally disabled individuals who do not possess obvious physical characteristics of developmental disability).

[122] *See supra* note 18 and accompanying text (explaining that developmentally disabled individuals are generally more eager to please authority figures than those of average intelligence).

[123] *See supra* text accompanying notes 19, 33 (explaining that developmentally disabled individuals will frequently waive their *Miranda* rights in an effort to appear cooperative with police officers).

[124] *See supra* text accompanying note 14 (explaining the adaptive functions in which developmentally disabled individuals frequently are deficient).

[125] *See supra* text accompanying notes 41–44 (explaining recommended interrogation tactics for developmentally disabled individuals).

[126] Telephone Interview with John Wahlberg, *supra* note 26.

[127] *See supra* note 28 and accompanying text (explaining the frequency with which judges, lawyers, and police officers have difficulty distinguishing between developmentally disabled and mentally ill individuals).

United States. Requiring such education will also allow current "in-service" officers to receive the same training that will be given to future "pre-service" officers.

Once officers receive the "pre-service" and "in-service" training, they will be equipped with the ability to *identify* developmentally disabled individuals, which is the most challenging obstacle to overcome in the effort to limit the number of involuntary waivers and false confessions given by this vulnerable population.[128] Involuntary waivers and false confessions will be limited because once officers realize they are faced with a developmentally disabled suspect, special steps will be taken to ensure that the suspect truly comprehends the *Miranda* rights and is capable of giving a valid waiver before an interrogation can begin.[129] If the suspect is capable of giving a valid waiver, the officer conducting the interrogation will be required to use special interrogation tactics designed to limit the risk that the suspect will give a false confession.[130]

Earl Washington's case would have turned out entirely differently had the police officers been properly trained in how to identify developmentally disabled individuals. The aspect of Washington's confession that should have been a glaring red flag to the officers was his willingness to confess and his eagerness to provide as many details as possible to implicate himself in the murder.[131] The only thing the officer said to prompt Washington's confession was that he wanted to talk to him about a woman who had been "stabbed" one year earlier, to which Washington immediately began confessing without further persuasion.[132] If the officers had been educated regarding the predisposition developmentally disabled individuals have to pleasing authority figures, they likely would have considered an alternative explanation for why Washington was so unusually willing to incriminate himself, rather than assuming he wanted to admit guilt outside the presence of an attorney.[133] With prior training, the officers likely would have discovered Washington was developmentally disabled. Discovering this would have stopped the interrogation and required special steps to be taken to verify Washington's comprehension of the *Miranda*

---

[128] *See supra* note 27 and accompanying text (explaining how the primary struggle is determining who is developmentally disabled and who is not).

[129] *See infra* text accompanying notes 159–163 (discussing the suspect's comprehension of his *Miranda* rights from the suspect's perspective).

[130] *See infra* text accompanying notes 190–193 (explaining specific tactics that should be used to interrogate developmentally disabled suspects).

[131] *See supra* text accompanying notes 54–61 (explaining the process of Washington's confession).

[132] *See supra* text accompanying notes 54–55.

[133] *See supra* text accompanying notes 66, 69 (explaining Washington's inability to understand his right to an attorney and his efforts to act as though he had a full understanding of his *Miranda* rights when he did not).

warnings and his ability to validly waive them, of which he was clearly incapable.[134]

Improved police education could also have prevented Charles Singletary from spending years in prison for a crime he did not commit.[135] If the interrogating officers had received special training regarding common living and employment characteristics associated with developmentally disabled individuals, they likely would have at least inquired into Singletary's background.[136] An officer with proper training likely would have considered the possibility that a 40-year-old man who lived with his aunt, worked as a park caretaker, and had an employment history consisting solely of performing menial jobs may have a deficiency in the adaptive skills of caring for himself or living independently.[137] If officers were more aware that such circumstances could be associated with developmental disability, it would result in officers creating a dialogue with the suspect regarding the reason for such a lifestyle. A simple conversation could establish that the lifestyle is either purely by choice or the result of dependency on others due to developmental disability.[138] Furthermore, if the officers in *Singletary* had learned he was developmentally disabled, they would not have used their standard interrogation tactics, which allowed the officers to accuse him of guilt, reject his pleas of innocence, and make his situation seem absolutely hopeless.[139] Thus, officer training on developmental disability is crucial to eliminating the problem of involuntary waivers and false confessions.

2. Implementing the Basic Intelligence Test to Ensure the Voluntariness of a Waiver

Once officers receive special training in how to identify developmentally disabled individuals, there will be less risk of involuntary waivers of *Miranda* rights because officers will employ special steps to ensure the suspect actually comprehends the rights and is not simply

---

[134] *See supra* text accompanying note 66 (illustrating his inability to comprehend the waiver form at trial).

[135] *See supra* text accompanying note 91 (explaining that Singletary was convicted despite suspicions of overt coercion in obtaining his confession).

[136] *See supra* text accompanying note 14 (explaining standard adaptive functions in which developmentally disabled individuals are frequently deficient); *supra* notes 71–72 and accompanying text (discussing Singletary's educational and employment history).

[137] This is not to say that all 40-year-olds who do not live alone and have only been employed in menial jobs should automatically be suspected as having a developmental disability; however, given the simplicity of such a lifestyle, it would at least be worth looking into to make sure the person is living in such a way by their own free will as opposed to an *inability* to live independently.

[138] *See supra* text accompanying note 14 (identifying deficiencies in self-care and home living as signs of developmental disability).

[139] *See supra* text accompanying notes 34–39 (explaining standard interrogation tactics).

agreeing to waive them in an effort to please the officer.[140] However, if improved police education alone is not sufficient to ensure officers will successfully identify these individuals prior to beginning an interrogation, an additional safeguard would be to require all individuals interrogated for felony-level crimes to take the Basic Intelligence Test that will further assist officers in identifying developmentally disabled individuals.[141]

The test is designed to distinguish those who are unable to understand their *Miranda* rights due to developmental disability, and thus unable to knowingly waive them, from those who can understand them.[142] Because false confessions are ultimately the product of an interrogation that occurred after a suspect waived his rights, the best way to eliminate false confessions is to ensure suspects do not involuntarily waive their rights due to an inability to understand them.[143] To ensure developmentally disabled suspects actually understand their rights, they must be required to explain their comprehension of them to the officers so the officers can make a good faith determination regarding whether the suspect sufficiently understands the rights.[144] However, because the typical procedure for obtaining a waiver is to simply ask the suspect to give a "yes or no" answer regarding his comprehension, these suspects will never have the opportunity to explain their comprehension of the rights if the officers do not first identify a reason to engage in such a detailed dialogue.[145] The way to trigger such a dialogue is to administer the Basic Intelligence Test to measure the general level of intelligence of the suspect, which will assist the officers in making a good faith assessment regarding whether the suspect is of ordinary intelligence,

---

[140] *See infra* notes 159–163 (explaining the proposed procedure for engaging in a dialogue with developmentally disabled suspects to ensure they understand their *Miranda* warnings).

[141] The test should not be administered to those who are arrested in the field immediately after the crime has been committed; rather, it is intended for those individuals who either willingly come to a police station to answer questions about a felony-related crime, like Charles Singletary and Johnny Lee Wilson, or who are brought to the police station for a different reason and are eventually questioned about the crime, like Earl Washington. This process should only be applied to investigations related to felony-level crimes because those carry the most serious punishments.

[142] *See supra* text accompanying note 48; Cloud et al., *supra* note 19, at 499–507 (explaining how empirical evidence has shown developmentally disabled individuals frequently do not understand their *Miranda* rights).

[143] *See supra* text accompanying notes 64–66 (explaining that Washington's confession came only after he waived his *Miranda* rights without a full comprehension of what they meant); *supra* text accompanying notes 78–80 (explaining Singletary's confession came after he was orally read his *Miranda* rights and given a sheet of paper to sign to waive the rights, although he could not read the paper because he was illiterate).

[144] *See supra* text accompanying note 106 (explaining the practical application of this process by the Florida Department).

[145] *See supra* text accompanying notes 53–54 (explaining Washington's procedure for waiving his rights with a simple acknowledgement of his comprehension without further dialogue); text accompanying notes 78–80 (explaining Singletary's procedure for waiving his rights with a simple oral recitation and signature on a piece of paper without further dialogue assessing the depth of his comprehension).

simply uneducated, or actually developmentally disabled.[146] Information learned from these tests will dictate whether the officers should proceed with a typical recitation of the *Miranda* rights to the individual, or if the officers need to engage in a more detailed dialogue with the individual to establish his or her comprehension of the rights.[147]

This test and the process described below should be administered in a pilot program with the Los Angeles Police Department and the New York Police Department for a period of three years as they are two of the largest police departments in the United States, and are in the best position to measure the effectiveness of this test and process.[148] If there is a decrease in the number of involuntary waivers and false confessions of developmentally disabled individuals, the process should be expanded to include more police departments across the country.[149] If the process does not reflect a decrease in involuntary waivers and false confessions, it should be altered to reflect its shortcomings until it is successful.

As a practical matter, the test should be printed on a sheet of paper, and the suspect should write the answers by hand. This will help identify those who are illiterate and perhaps suffering from other disabilities as well, like Charles Singletary.[150] The interrogating officer should administer it and observe the individual write out the answers to the test. Requiring this type of observation will allow the officer to see whether and to what extent an individual struggles with the test.[151] Additionally, if there is an opportunity to videotape the individual taking the test, this will offer further evidence if there is a dispute later regarding the suspect's ability to waive his or her rights.[152]

The questions should be extremely basic and test a person's ability to think concretely by asking questions about simple historical and geographic facts such as: who was the first President of the United States?; who is the current President of the United States?; and what two countries border the

---

[146] *See supra* note 30 and accompanying text (explaining how officers are willing to take different steps in an interrogation process if they know the suspect is developmentally disabled).

[147] *See supra* text accompanying note 105 (explaining how some developmentally disabled individuals struggle to understand *Miranda* rights and would likely benefit from different approaches requiring more detailed explanations of the rights).

[148] BRIAN A. REAVES, DEP'T OF JUSTICE, CENSUS OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES, 2008 14 (2011), *available at* http://www.bjs.gov/content/pub/pdf/csllea08.pdf (2008 United States police department statistics).

[149] If successful, the process should be expanded to other large police departments across the United States.

[150] *See supra* note 73 and accompanying text (explaining Singletary's illiteracy).

[151] *See supra* text accompanying note 66 (illustrating the difficulty Washington had reading through his *Miranda* waiver form at trial, the struggle he had sounding out certain words, and his inability to explain each right).

[152] *See supra* text accompanying notes 113–115 (explaining the benefits of videotaping interrogations).

United States to the north and south?[153] The questions should also test their ability to reason abstractly by asking: what is a season? and how is a lion similar to a tiger?[154] Additionally, the questions should test their knowledge of the legal system and ask: what does a lawyer do?; what does a judge do?; and what is a trial for?[155] These questions are designed to be so simple that a person of either ordinary or average intelligence would have no problem answering them correctly, which will help officers identify which suspects are not developmentally disabled. There will certainly be people who are uneducated but not developmentally disabled who struggle with the concrete historical questions, but they will likely be able to convey what a season is in a manner that will allow the officer to determine whether they are familiar with the concept and able to reason abstractly.[156] The real purpose of the test is to weed out those individuals who struggle immensely with abstract reasoning due to developmental disability.

If the individual does not struggle and is able to satisfactorily pass the test based on the officer's good faith judgment, then the officer can proceed with a standard administration of the *Miranda* rights without further discussion.[157] However, if the individual struggles with the test, the officer will be able to ask the individual about the parts he or she specifically struggled with, which will help differentiate between individuals who struggle because they are simply uneducated and lack basic knowledge and cognitive skills, and those who struggle because they are developmentally disabled. For example, if the individual does not know who the President is, but is able to verbally explain what a season is, the officer will know that the

---

[153] *See supra* text accompanying note 100 (explaining the exchange that took place in front of the judge where Young was asked basic questions requiring general knowledge to test his concrete thinking abilities).

[154] *See supra* text accompanying note 100 (explaining Young's inability to reason abstractly to explain what a season was).

[155] *See supra* text accompanying notes 100–101 (explaining that Young's knowledge of the criminal justice system was sufficient to support a ruling that he understood his rights and his waiver was voluntary).

[156] *See supra* note 100 and accompanying text (explaining Young's inability to comprehend and articulate what a season was due to his developmental disability).

[157] There is no benefit to suspects who either fail the test intentionally or refuse to take it at all because the test merely informs the interrogating officer of whether the person is likely capable of comprehending their *Miranda* rights as they are read to them, or whether a further dialogue about the *Miranda* rights needs to occur. If a suspect refuses to take the test, it will be further evidence for the officer to consider when deciding whether that suspect is developmentally disabled because developmentally disabled individuals are not likely to refuse to do something an officer, as an authority figure, asks them to do. Additionally, there is no incentive to fail the test, which could potentially slow the interrogation process as a whole, because the only benefit received by an individual who fails is to have the officer engage in a dialogue about the *Miranda* rights, as opposed to simply reading and demanding a "yes or no" answer regarding the suspect's comprehension.

suspect is simply uneducated and can proceed with standard *Miranda* warnings.[158]

If the suspect struggles with the entire test and is unable to comprehend and answer the basic questions, officers will know that other steps need to be taken before proceeding with an interrogation about the crime. For example, the suspect should immediately be read the *Miranda* rights and be asked to give an opinion as to what those rights mean.[159] Based on the suspect's answers, the interrogating officers should be required to make a good faith assessment as to whether the suspect's opinions reflect an accurate comprehension of the warnings.[160] If the officers conclude after this dialogue that the suspect does not comprehend the warnings, the interrogation process must stop, and steps must be taken to provide the suspect with an attorney, since clearly the suspect is unable to ask for one or waive the right to having one if he or she does not understand that right to begin with.[161] Requiring a more detailed dialogue for the *Miranda* warnings coincides with scholars Drizin and Leo's proposal of taking more time to fully explain the warnings to ensure the suspects are not blindly agreeing to waive rights they do not understand.[162] This process will also create a more structured approach to ensuring the voluntariness of a waiver in a manner similar to the procedure practiced by the Florida Department.[163]

On the other hand, if the individual exhibits a satisfactory comprehension of the warnings, the next step is determining whether the suspect would like to either invoke or waive his or her rights to remain silent or to have an attorney present.[164] Because it can be difficult for suspects to clearly invoke either right, the standard presumption against a waiver must still be in place.[165] Any effort by the suspect to invoke either right, including remaining silent, should be presumed based on the exercise of good faith by

---

[158] *See supra* note 100 and accompanying text (explaining that Young could not answer either question successfully due to his developmental disability).

[159] *See supra* text accompanying note 106 (explaining the Florida Department's procedure for engaging in a dialogue).

[160] *See supra* text accompanying note 66 (illustrating that a dialogue about *Miranda* rights can reveal the fact that suspects do not understand them, like in Washington's case).

[161] *See Berghuis*, 560 U.S. at 382–83 (explaining that a valid waiver requires a suspect to understand what the rights are).

[162] *See supra* text accompanying note 105 (explaining the benefits of simplifying the *Miranda* warnings).

[163] *See supra* text accompanying note 106 (explaining the Florida Department's process for securing a valid waiver of *Miranda* rights).

[164] *See Berghuis*, 560 U.S. at 380–82 (explaining that invoking *Miranda* rights must be done unambiguously).

[165] *See id.* at 383 (explaining that a valid waiver will not automatically be presumed and that the government has a high burden to demonstrate the waiver was knowing and voluntary).

the officer.[166] If, however, the suspect decides to waive his or her rights, the suspect should be permitted to under these circumstances.[167]

The officers in *Young* did an excellent job of identifying the strengths and weaknesses of Young's general knowledge as well as his ability to reason abstractly.[168] Identifying his abilities provided the court with concrete evidence to examine when deciding whether his waiver was voluntary, which is exactly what the Basic Intelligence Test will help accomplish.[169] If the interrogation begins with questions that measure the suspect's general intelligence, it will provide the officers with an opportunity to better gauge whether the suspect will later be able to comprehend the *Miranda* warnings and give a valid waiver, and will provide further evidence for the court to consider.

Furthermore, implementing the Basic Intelligence Test will create new procedural steps at the police departments piloting the process that will help ensure the voluntariness of a waiver, improve the quality of interrogations and the credibility of confessions. The Florida Department has already created a policy requiring special procedural steps be taken by its officers before interrogating a developmentally disabled individual, which is something that should be adopted by the two pilot departments to ensure the test's effectiveness before imposing a uniform requirement across the United States.[170]

Requiring special procedural steps to interrogate a developmentally disabled individual could potentially frustrate police officers initially because it requires an extra step to complete, in addition to complying with procedures already in place; however, it is worth the extra step if even one vulnerable suspect can be spared the lifelong consequences of involuntarily waiving his or her rights and giving a false confession. If such steps had been in place while Earl Washington or Charles Singletary were interrogated, the officers would surely have discovered their status as developmentally disabled and likely never would have put them in a position to give false confessions.[171]

Washington's case would have had a different result because administering the Basic Intelligence Test would have allowed the officers to better gauge his levels of comprehension. Had a dialogue about his *Miranda*

---

[166] *See id.* at 403 (Sotomayor, J., dissenting) (explaining the presumption against waiver).

[167] *See supra* text accompanying note 101 (upholding Young's waiver because he understood his rights).

[168] *See supra* text accompanying notes 100–101 (explaining the dialogue of questions that established Young's ability to comprehend his rights).

[169] *See supra* text accompanying note 100 (explaining that Young's answers to the questions were a basis for holding that his waiver was valid).

[170] *See supra* text accompanying note 107 (explaining the procedure of notifying a supervisor before an interrogation of a developmentally disabled individual can begin).

[171] *See supra* note 31 and accompanying text (explaining how officers would have done things differently had they known the individual was developmentally disabled).

rights taken place before his confession, the officers would have discovered that he did not know what a lawyer could do for him or that he was entitled to have one appointed for him.[172] The Basic Intelligence Test could also have given the courts more to consider when examining the voluntariness of his waiver because the courts would have had more to rely on than the conversation with Washington's attorney and the opinions of various psychiatrists that he was able to comprehend his rights.[173]

Singletary's case also would have had a much different result if he had been administered the Basic Intelligence Test prior to being interrogated because the officers would have discovered immediately that he was illiterate.[174] This is not to say that all people who are illiterate are developmentally disabled, but it would have at least provided the officers with an opportunity to engage in a dialogue with Singletary to determine why he was struggling with the test. If the officers had asked Singletary to explain why he could not read or write, it would have come up that from a young age he was labeled a "non-learner," received special education, and was in fact developmentally disabled.[175] Furthermore, since Singletary would have "failed" the test, the officers would have been required to read him his *Miranda* rights and ask him to explain in his own words what they meant, instead of simply asking him a "yes" or "no" question about his comprehension and having him sign a waiver they knew he could not read.[176] Given Singletary's status as a "non-learner," he likely would have struggled in explaining what his *Miranda* rights were, which would have altered the course of events that took place thereafter that ultimately resulted in his false confession and conviction.[177]

Videotaping the test administration and any dialogue regarding a suspect's comprehension of the *Miranda* rights would also be immensely helpful in documenting the exact circumstances that occur during the process of obtaining a valid waiver.[178] Earl Washington's case likely would have had a different result if each of his interrogations had been videotaped, simply because his eagerness to confess and cooperate with authority would have been documented in a way that would have better illustrated the context of

---

[172] *See supra* text accompanying note 66 (illustrating Washington's inability to comprehend his rights).

[173] *See supra* note 68 and accompanying text (explaining the evidence the Supreme Court relied on which essentially excluded Washington's conversation on the record at his original trial demonstrating his inability to comprehend the waiver form).

[174] *See supra* text accompanying notes 71–72 (detailing Singletary's history of illiteracy).

[175] *See supra* text accompanying note 72 (explaining Singletary's educational history).

[176] *See supra* text accompanying notes 78–80 (illustrating the simple procedure for obtaining Singletary's waiver).

[177] *See supra* text accompanying notes 81–91 (detailing the process of Singletary's interrogation, false confession, and conviction).

[178] *See supra* text accompanying notes 113–115 (explaining the benefits of videotaping confessions and interrogations).

his waiver and confession for the various courts.[179] Likewise, had there been a videotape of Singletary's initial waiver and interrogation, there would have been far less disagreement regarding the reliability of his confession, and the district court's suspicions of coercive tactics would surely have been confirmed.[180]

3. Special Interrogation Tactics Must Be Used to Elicit Confessions, and All Confessions Must Be Corroborated with Independent Evidence to Ensure Their Credibility

If a developmentally disabled individual is able to give a valid waiver and confession, the confession should not be admitted into evidence at trial unless there is proof that the information was: (1) provided by the suspect, not the officer; (2) obtained by special interrogation tactics; and (3) corroborated by independent evidence.

a. Requiring Information from the Suspect

To combat the risk of false confessions, officers should not be allowed to offer information about the details of the crime to a developmentally disabled suspect; however, officers should be permitted to speak generally about the crime so as to conduct an effective interrogation. Suspects should be required to give non-public information with a sufficient level of detail that only someone involved with the crime would know.[181] Requiring that the facts of the confession be provided by the suspect instead of the officer will ensure that they are credible and not merely an effort by the suspect to expand on information provided by the officer.[182] Ideally, the most ironclad way to prove that the confession was based solely on information from the suspect would be to offer a videotape of the confession into evidence at trial, along with a sworn affidavit from the interrogating officer as to the validity of the confession.[183] If a videotape is unavailable, officers should still be required to submit a sworn affidavit that they did not

---

[179] *See supra* text accompanying notes 55–61 (describing Washington's unusual willingness to incriminate himself).

[180] *See supra* note 71 and accompanying text (explaining the court's suspicions that coercion was involved).

[181] *See supra* note 70 and accompanying text (illustrating Wilson's utter failure to provide any nonpublic information).

[182] *See supra* text accompanying notes 54–61 (illustrating the oddity that Washington only confessed during the first interrogation to facts relating to the stabbing, which the officers told him about, and did not confess to the rape until a subsequent interrogation, where he gave very general descriptions that remained focused on the presence of the knife).

[183] *See supra* text accompanying notes 113–115 (explaining the benefits to the court of seeing videotaped evidence).

offer any detailed information about the crime that could have influenced the suspect's confession.[184]

Requiring such a process would have prevented Washington's confession from being admitted into evidence at his trial because it is clear that the officers provided detailed information specifying that the victim was "stabbed," and only during a subsequent interrogation, that she was also "raped."[185] Washington latched onto both pieces of information when he created his false confession.[186] It is no coincidence that all of the information offered by Washington during his initial interrogation about the murder focused only on the stabbing and what he did with the knife afterward.[187] Washington was not aware that the victim had also been raped until a subsequent interrogation the following day, where suddenly he began providing details of how he forced the victim to have sex with him because he had a knife.[188] If Washington had actually been guilty of the crimes, his initial confession would have involved details regarding both crimes from the outset. Had the officers used general references like, "a woman was killed" and "she had sex at least 24 hours before she was killed," it is unlikely that Washington would have been able to give a credible confession.[189] To give a credible confession to corroborate such general information, Washington would have had to correctly guess that the woman was killed with a knife, as opposed to a gun or other weapon, and that the sex was not consensual. Because it is so easy for developmentally disabled individuals to expand on information provided to them, regardless of its truth, special requirements should be followed to deprive them of the opportunity to give a false confession before it can be admitted at trial.

b. Employing Special Interrogation Tactics

An additional precaution that must be taken to combat the risk of false confessions is to require officers interrogating developmentally disabled suspects to employ special interrogation tactics that focus on asking simple, non-accusatory questions. The interrogation tactics recommended by Inbau and Reid should be required in all police departments across the

---

[184] *See supra* text accompanying notes 53–62 (explaining that officers testify at trials regarding the context of waivers and confessions).

[185] *See supra* text accompanying notes 54–56.

[186] *See supra* text accompanying notes 54–61 (explaining the inconsistencies and added facts to which Washington confessed after the police officers told him about the facts of the case).

[187] *See supra* text accompanying note 56 (explaining that although the suspect had been raped, Washington made no mention of this during his first confession).

[188] *See supra* note 61 and accompanying text (explaining how his confession about the rape was extremely general and focused on the fact that he had a knife with him since he knew the victim had been stabbed with one).

[189] *See supra* text accompanying note 51 (explaining that DNA evidence proved that, although someone had sex with the victim before she was killed, Washington could not possibly have been responsible).

United States, and only confessions obtained through use of these tactics should be admissible at trial.[190] These tactics take into account the emotional and impulsive nature of these individuals and honor the limitations of developmental disability by asking questions in simple formats and avoiding accusatory language that is likely to make the individuals uncomfortable and confused.[191] Additionally, avoiding accusatory language will limit the likelihood that the suspect will feel an overwhelming need to please the officer and admit to whatever guilt he or she is being accused of, regardless of culpability.[192] If a suspect is accused of *personally* doing something wrong, as opposed to simply being informed that a crime was committed by *someone*, there is a greater likelihood that the suspect will make false statements either to rectify the wrong he or she is accused of committing or to resolve the situation so he or she can go home.[193]

Singletary's case would have had a different result if the officers were prohibited from using standard interrogation tactics allowing them to accuse him of killing his niece.[194] With the constant hammering of accusatory questions, Singletary ultimately broke down and confessed to a crime he knew he did not commit because he was told that he would go to jail if he refused.[195] If the officers had only interrogated him using simple questions, Singletary may have had a better opportunity to comprehend the options the officers gave him, and he likely would not have succumbed to the psychological pressures of the interrogation questions.[196]

In addition to being prohibited from asking accusatory questions, officers should never be allowed to ask questions that coincide with the standard interrogation tactics.[197] Officers should never be allowed to ask leading questions because providing the preferred answer within the question increases the risk that developmentally disabled suspects will blindly give the answer that the officer appears to want.[198] Likewise, under no

---

[190] *See supra* text accompanying notes 41–42 (explaining the recommended interrogation tactics).

[191] *See supra* text accompanying note 42.

[192] *See supra* text accompanying notes 20, 42 (explaining developmentally disabled individuals' tendency to become confused and overwhelmed easily and how non-accusatory language can help prevent this).

[193] *See supra* text accompanying notes 84–87 (discussing Singletary's false confession, which resulted in part from suggestions that both the officers and his family believed he was guilty).

[194] *See supra* text accompanying notes 76–77, 81–88 (illustrating the accusatory tone of his interrogation).

[195] *See supra* text accompanying 86–87.

[196] *See supra* text accompanying notes 81–84 (illustrating that Singletary was able to understand the basic questions he was being asked, but struggled in comprehending the long-term consequences of giving a confession, since he thought he would be able to get into a drug rehabilitation program instead of going to prison).

[197] *See supra* text accompanying notes 36–39 (explaining the standard interrogation tactics used by officers on individuals of ordinary intelligence).

[198] *See supra* text accompanying notes 18–19 (explaining the tendency of developmentally disabled individuals to blindly agree with authority figures).

circumstances should officers be permitted to lie to suspects regarding evidence or facts of the case. The proposals suggesting that officers "avoid" using leading questions and "should not" lie to suspects are insufficient to effectively combat the problem of false confessions because such proposals do not provide for a complete prohibition on the tactics.[199] These proposals should be taken one step further to entirely prohibit all leading questions during interrogations of known developmentally disabled individuals because given how typical it is to ask leading questions during ordinary interrogations, a rule that only requires officers to "avoid" asking them is not enough to ensure they will not be asked.[200]

Asking non-leading questions is an effective interrogation tactic and also avoids the risk of informing the suspect of non-public facts that the suspect can latch onto in making a false confession.[201] Singletary's case would have come out differently had there been a prohibition on leading questions as his interrogation was filled with them. These questions were so effective on Singletary that he eventually wore down to the point of confessing to a crime he knew he had not committed.[202] Although Washington's interrogations were not particularly aggressive or filled with leading questions, his documented eagerness to please authority figures would have certainly affected his confession had leading questions been used.[203]

Lying to developmentally disabled suspects must also be prohibited. The proposal recommending that officers "should not" lie to suspects is not sufficient to combat the problem of false confessions because lying is commonplace in interrogations.[204] Given how dependent developmentally disabled individuals are on authority figures for the truth, any false representations by an officer will likely alter the suspect's perception of the circumstances.[205] If the suspect knows he or she is not guilty of a crime, but is lied to by the officer and told that family members believe he or she is guilty, the suspect may willingly confess to the crime of which he or she is

---

[199] *See supra* text accompanying notes 110–112 (explaining proposals and policies that suggest officers should avoid using leading questions or lying to suspects).

[200] *See supra* text accompanying note 35 (explaining the frequent use of leading questions and why and how they are used).

[201] *See supra* note 70 and accompanying text (explaining Wilson's inability to accurately provide any independent information about the crime).

[202] *See supra* text accompanying notes 81–87 (detailing the context of Singletary's confession and the use of leading questions).

[203] *See supra* text accompanying note 69 (explaining Washington's efforts to mask his developmental disability by pretending as though he understood his rights in an effort to please the officers).

[204] *See supra* text accompanying note 34 (explaining the frequency with which trickery and deceit are used by police officers to extract statements from suspects during interrogations).

[205] *See supra* note 84 and accompanying text (explaining Singletary's decision to confess, in part, after learning his family believed he was guilty and would potentially forgive him if he confessed, which the officer had lied about).

innocent in the hope of improving the situation with his or her family, like in Singletary's case.[206] Although there was no deceit used during Washington's interrogation, his situation would likely have been worsened if deceit was involved given his eagerness to provide information about the Williams murder in an effort to please the officers.[207]

Furthermore, use of the standard interrogation tactics that involve convincing suspects that their situation is hopeless and their best option is to confess must be prohibited.[208] Developmentally disabled suspects are unlikely to be able to fight off the psychological pressures that follow when officers try to convince them that everyone thinks they are guilty, especially when coupled with the standard dismissal tactic used on all claims of innocence.[209] Additionally, when officers try to discredit alibis and accuse the suspect of lying, eventually these suspects will break down and often give false confessions simply to make the interrogation stop, the way Singletary did.[210] The officers also told Singletary that he could possibly get into a drug rehabilitation program instead of jail if he confessed, which coincides with the standard second step of interrogation highlighting the benefits that may come from confessing.[211] Singletary, of course, relied on this information and confessed, exemplifying the problems that occur when standard interrogation tactics are used on developmentally disabled individuals. Similarly, Washington's case is a cautionary tale demonstrating that use of standard interrogation tactics can have the terrible result of eliciting a false confession given the vulnerability of developmentally disabled individuals. Because developmentally disabled individuals are so easily influenced by information provided to them by authority figures, it must be required that special interrogation tactics have been used before a confession will be admissible at trial.

c. Requiring Corroboration Through Independent Evidence

Confessions given by developmentally disabled individuals must also be corroborated by independent evidence to be admissible at trial. The Florida Department has an excellent procedure in place that requires a "Post Confession Analysis" to be conducted to ensure the credibility of the

---

[206] *See supra* note 84 and accompanying text (explaining Singletary's decision to confess, in part, after hearing that his family believed he was guilty and would potentially forgive him if he confessed, which the officer fabricated).

[207] *See supra* text accompanying notes 55–61.

[208] *See supra* text accompanying note 37.

[209] *See supra* note 84 and accompanying text (explaining Singletary's decision to confess, in part, after hearing that his family believed he was guilty and would potentially forgive him if he confessed, which the officer fabricated).

[210] *See supra* text accompanying notes 81–86 (illustrating that the officer accused Singletary of lying throughout the entire interrogation until he gave his false confession).

[211] *See supra* text accompanying notes 38–39 (explaining the second step of the standard interrogation process).

confession; however, the procedure is flawed for purposes of practical application because in circumstances where there is no evidence to corroborate the confession, as many as three people can be required to perform the analysis, which is excessive given the simplistic nature of the analysis.[212] Because the primary purpose of the analysis is merely to establish corroboration between the suspect's confession and the evidence obtained, the analysis can effectively be done by the interrogating officer who has that information.[213]

Requiring such an analysis to ensure the credibility of the confession could also have prevented Washington's conviction because there would have been sufficient evidence to highlight the drastic inconsistencies of his confession.[214] The same is true of Wilson's case, where the court found that none of the information provided by Wilson himself was credible because it was inconsistent with known evidence.[215] If the court had required the state to produce some form of independent corroboration for the confession, Wilson would have been released because the sole piece of evidence was his confession, and it was grossly inaccurate.[216] Likewise, Singletary's case would have been different because the officers conducting the investigation knew he was unable to provide certain details.[217] Because the crime took place in his niece's apartment, of which he was familiar, there was no evidence that the information he provided was known to him as a result of committing the crime, as opposed to simply having general knowledge about where she lived.[218]

Officers know they cannot provide fabricated evidence to the state, so requiring a sworn affidavit regarding the validity of a confession would not be an unreasonable requirement for the criminal justice system to impose. Likewise, comparing the information in a confession with the evidence collected from the crime scene for consistency purposes is

---

[212] *See supra* text accompanying notes 108–109 (explaining the "Post Confession Analysis" procedure).

[213] *See supra* text accompanying notes 54, 81, 70 (illustrating how the officers who interrogated Washington, Singletary, and Wilson all had information about the crime before the interrogations began).

[214] *See supra* text accompanying notes 59–61 (illustrating the inconsistencies of Washington's confession where he said he only stabbed the victim once or twice, when she was actually stabbed thirty-eight times; he said the victim was African American when she was actually Caucasian; and he said he kicked in the door to her apartment, but the door was found intact).

[215] *See supra* note 70 and accompanying text (detailing a case that involved a pardon after an extensive investigation revealed that Wilson had given a false and inaccurate confession to police officers).

[216] *See supra* note 70 and accompanying text (explaining that, upon further investigation, it was discovered that the confession was wholly unsubstantiated).

[217] *See supra* text accompanying note 88 (explaining that the officers told him to describe his motive as one of financial gain).

[218] *See supra* note 73 and accompanying text (explaining that Singletary lived across the hall from his niece).

something that officers must do to ensure the confession's validity in the first place, so there is not an excessive amount of extra work necessary to comply with such a requirement.[219] Thus, to protect developmentally disabled individuals from allowing their false confessions to be admitted into evidence at trial, officers must be: (1) prohibited from providing detailed information of the crime, (2) required to employ special interrogation tactics, and (3) required to provide independent evidence that corroborates the confession. If officers fail to comply with these three requirements when obtaining a confession from a developmentally disabled individual, the confession must be inadmissible at trial due to the high risk that the confession may be false.

B. Ensuring the Effectiveness of the Proposals: Developmentally Disabled Individuals Should Not Be Categorically Prohibited from Giving a Voluntary Waiver or Confession

To ensure these proposals are effective and not so protective that they inhibit the ability to prosecute individuals who are in fact capable of committing crimes and are a danger to society, developmentally disabled individuals should not be categorically prohibited from giving voluntary waivers or confessions.[220] While developmentally disabled individuals should not have their disability exploited by police officers or the legal system, they also should not be allowed to use their disability as a means to render them unable to waive their rights or give confessions.[221]

Young is a perfect example of why there cannot be categorical rules prohibiting waivers and confessions. If such rules existed, Young could have been released and given the opportunity to commit further crimes without receiving proper punishment.[222] Young tried to take advantage of the legal system by claiming he should be freed simply because he could not understand the *Miranda* warnings, despite the fact that he had just committed rape and murder.[223] Suspects like this must be punished and society must be protected from them. These proposals are not intended to prevent the interrogation and subsequent prosecution of all developmentally disabled individuals. Rather, they are intended to protect those individuals who are

---

[219] *See supra* note 61 and accompanying text (explaining that the officers brought Washington with them to the crime scene to confirm that his statements were true).

[220] *See supra* note 97 and accompanying text (explaining the court's reasoning that imprisoning Young was both appropriate and necessary since he appeared to be utterly undeterrable).

[221] *See supra* text accompanying notes 99–100 (rejecting the defendant's argument that, due to his mental shortcomings and inability to understand *Miranda* warnings, he was incapable of making effective confessions, and must therefore be required to walk free).

[222] *See supra* note 97 and accompanying text (explaining the court's opinion that Young would likely reoffend because he was undeterrable).

[223] *See supra* text accompanying notes 97–99 (explaining the context of Young's confession and argument for suppression).

innocent and incriminate themselves by reason of a disability over which they have no control.

IV. CONCLUSION

Developmentally disabled individuals represent one of the most vulnerable groups of people subject to criminal interrogations, and better safeguards need to be put into place to ensure they give knowing waivers of their *Miranda* rights and do not give false confessions. This begins with better police training on how to identify developmentally disabled individuals and how to properly approach an interrogation of them.[224] In the event that police education is not enough to solve the problem, an alternative form of protection is to require the Basic Intelligence Test be given to suspects who will be interrogated for felony-level crimes. Even if only a handful of developmentally disabled individuals would be helped by a test of this kind, that is reason enough to administer a pilot program in the Los Angeles and New York Police Departments to measure its effectiveness.

Furthermore, there must be a requirement that all confessions given by developmentally disabled suspects are corroborated with some form of evidence independent of the confession. Officers should also be prohibited from using standard interrogation tactics on developmentally disabled individuals because of the high risk that they will succumb to the psychological pressures and give false confessions. Specific interrogation tactics tailored to interrogating developmentally disabled individuals must also be required to avoid eliciting false confessions.

It is imperative that conscious efforts be made to create protections for these individuals that are reasonable, and do not unjustly hinder the ability to prosecute those who are in fact capable of committing crimes. The Supreme Court has never held that, simply by virtue of a developmental disability, a suspect is incapable of waiving his or her *Miranda* rights, confessing to a crime, or even committing a crime, and the proposals articulated in this article do not suggest otherwise.

The proposals in this article are an effort to ensure that when waivers of *Miranda* rights and confessions are given by developmentally disabled individuals, they are credible. These proposals are designed specifically to protect those developmentally disabled individuals who are innocent from confessing to crimes they have not committed. More needs to be done to ensure these suspects understand their *Miranda* rights so they can make informed decisions of whether or not to waive them. False confessions are a significant problem faced by the criminal justice system, and more needs to

[224] The common theme among the cases cited *supra* is that the officers did not realize that the suspects were developmentally disabled prior to beginning the interrogations. *See supra* text accompanying notes 31, 68, 70, 90 (explaining the circumstances of Faris's, Washington's, Wilson's, and Singletary's interrogations, respectively).

be done to prevent false confessions from being given by vulnerable populations, like developmentally disabled individuals.